IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11696 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KAMLESHKUMAR HARIKRUSHNABHAI BHAVSAR - detenu(s)
Versus
DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for detenu(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2, 4,
MR AY KOGJE GOVERNMENT PLEADER for Respondent(s) : 2,
MR M.IQBAL A SHAIKH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/09/2006

ORAL JUDGMENT

1. By way of this petition, the detenu has challenged the order of District Magistrate, Mehsana dated 18.04.2006 passed in exercise of powers under Section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (“P.B.M. Act” for short), detaining him.

2. The brief facts of the case are that on 18.02.2006 and 22.02.2006, inspection of the premises of the detenu was carried out by the Authority and the detenu was found involved in unauthorized activity of purchase, store and sale of blue kerosene and selling Light Diesel Oil (L.D.O.) by mixing the blue kerosene in it. Thereafter, the detenu came to be detained by the Authority vide impugned order.

3. The detenu has challenged the order of detention by this petition under Article 226 of the Constitution on various counts. However, learned Advocate appearing for the detenu, has restricted his arguments to the aspect of delay in consideration of the representation by the Central Government only. In support of his argument, he has placed reliance on affidavit in reply filed on behalf of the Central Government itself. He submitted that the first representation made on behalf of the detenu dated 24.04.2006 was received by the Central Government on 01.05.2006. The said representation was

rejected by the Authority on 03.05.2006 and the same was communicated to the detenu on 04.05.2006. Second representation made by the detenu was received by the Special Branch on 22.07.2006. After receiving the said representation, a file was prepared by the Special Branch on 04.08.2006. The representation was placed before the Authority on 07.08.2006 which rejected by it on the same day and the detenu was informed about the same on 08.08.2006. Learned Advocate for the detenu has submitted that an attempt is made to explain this delay by stating that 6th August, 2006 was a holiday. However, no explanation is given for rest of the period, therefore, this unexplained delay has affected the detenu's right of making an effective representation. The continued detention of the detenu is, therefore, rendered illegal. In support of his case learned Advocate for the detenu has placed reliance on a decision of the Apex Court in the case of ***"Rajammal Vs. State of Tamil Nadu"*** reported in AIR 1999 SC 684, particularly, on paras 8 and 9 of the said

judgment where the Apex Court has observed as under,

> “**8.** It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. **Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in @page-SC687 clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest**. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362). The following observations of the Bench can profitably be extracted here (Para 12 of AIR) :
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> "It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances

> of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."
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> **9.** The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.”

4. On the contrary, Mr. Kogje, learned A.G.P. has supported the order of detention on behalf of the detaining authority and the State Government and Mr. Shaikh, learned Counsel for the Central Government has supported the order of detention on behalf of the Union of India.

5. Heard. Considering rival side contentions the only question that needs to be addressed by this Court is whether there was delay in consideration of representation on behalf of the detenu made to the Central Government.

5.1 There is no dispute about a representation having been made on behalf of the detenu to the Central Government. The representation dated 22.07.2006 was received by the Authority on 26.07.2006. The Authority forwarded the said representation to the Central Government which was received by it on 03.08.2006. The representation came to be rejected by the Central Government on 07.08.2006. The affidavit in reply filed on behalf of the Central Government states that the representation was received on 03.08.2006 and 06.08.2006 was a holiday, and thereafter the representation was considered on 07.08.2006. Even if this explanation is accepted, there is no explanation coming forward from the Central Government for

dates between 22nd July and 3rd August 2006 i.e. for about nine days. When the Central Government had received the representation on 03.08.2006, it was expected of the Central Government to have acted expeditiously or to have explained as to how these nine days were consumed in considering the representation and, in absence of any explanation from the Central Government in this regard, it can certainly be said that there is a delay in considering the representation made by the detenu, which has adversely affected the right of the detenu of making an effective representation. Hence, in above view of the matter and in view of the decision of the Apex Court in the case of ***"Rajammal Vs. State of Tamil Nadu"*** (Supra) the order of detention requires to be quash and set aside. The petition, therefore, requires to be allowed.

6. In view of the above discussion the petition is allowed. The impugned order of detention passed by District Magistrate, Mehsana dated 18.04.2006 is hereby quashed and set aside.

The detenu is ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute with no order as to costs.

(K.S. Jhaveri,J.)

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